

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.18389 of 2017 (O&M)
Date of Decision: 15.07.2019.

Ranbir

...Petitioner

Versus

State of Haryana and others

....Respondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. Sunil K. Nehra, Advocate for the petitioner.
Mr. Harish Rathee, Sr. DAG, Haryana.

B.S.Walia, J.,

[1] Prayer in the writ petition is for the issuance of a writ in the nature of Mandamus for directing the respondents to issue appointment letter to the petitioner as Constable (General Duty) from the date similarly situated constables were appointed in view of his having been declared successful in the result Annexure P/3 dated 23.06.2017.

[2] Brief facts of the case leading to the filing of the writ petition are that an advertisement was issued by the Haryana Staff Selection Commission (hereinafter referred to as 'the Commission') on 19.07.2015 for filling 5000 posts of Male Constable (General Duty). Petitioner claiming to be fulfilling the eligibility conditions, applied for the said post under the BCB category and was issued Roll No.1001188351-Annexure P/2. On the basis of selection process, the petitioner was declared successful under BCB category on account of his having secured 65.60 marks as against cut of marks of 61.90, as is evident from Annexure P/4. On being sent for medical examination, the petitioner appeared before the Civil Surgeon, Hisar from

where he was referred to PGIMS, Rohtak for medical examination, where

the medical examination of the petitioner was conducted and report Annexure P/6 dated 11.07.2017 given mentioning that the medical board was of the opinion that there was evidence of '*right dorso lumber spine scoliosis*'. The terms '*lumber spine scoliosis*' has been mentioned by the petitioner at page No.8 of the paper book, as signifying a slight curvature in the dorso lumber spine with convexity towards right side. On the basis of the medical examination of the petitioner conducted by the department of Orthopaedics, PGIMS, Rohtak, the Civil Surgeon, vide Annexure R/3 dated 18.07.2017 declared the petitioner medically unfit on account of having been diagnosed with right dorso lumber spine scoliosis. Aggrieved by the medical report declaring the petitioner medically unfit for appointment, the petitioner approached this Court by way of the instant writ petition claiming that the medical condition noted by the PGIMS, Rohtak did not constitute a disqualification or medical unfitness, consequently the recommendation given by the Civil Surgeon dated 18.07.2017 declaring the petitioner medically unfit was legally unsustainable.

[3] Written statement was filed taking up the plea that the competent authority i.e. Civil Surgeon had on the basis of medical examination conducted by the PGIMS, Rohtak found the petitioner to be medically unfit on account of *right dorso lumber spine scoliosis* and that even clarification had been given by the Civil Surgeon, Sirsa to the Commandant, 3rd Battalion, Haryana Armed Force, Hisar indicating the complication/implications of *right dorso lumber scoliosis*. Subsequently, vide order dated 05.09.2018, the petitioner was directed by this Court to appear before the Director, PGIMS, Rohtak for ascertainment of his medical condition as also the duration for which he could work in the said condition.

Pursuant thereto, report was submitted on 18.10.2018 that the duration of the

period for which the petitioner could work with the condition of *right dorso lumber spine scoliosis* and the time period of implication / complication was dependant on many variables, therefore, it could not be predicted. Learned counsel contends that in the circumstances denying appointment to the petitioner was not justified. Learned Counsel further states that the petitioner who is present in Court undertakes not to claim any benefit whatsoever including disability pension in the eventuality of developing medical complications and having to be relieved from service in view thereof.

[4] Dr. Rohit Dumra, MO (Ortho), Civil Hospital, Sirsa, who is present in Court states that consequences / complications / implications referred to in Annexure R/4 dated 20.09.2017 cannot be predicted as to in how much period of time the same may occur. The learned medical officer further informed that the complications / implications mentioned in Annexure R/4 were likely to occur / aggravate during strenuous activities.

[5] I have considered the submission of learned counsel for the parties.

[6] Rule 12.16 (1) of the Punjab Police 1934 as amended upto 31.03.2008 as applicable in the State of Haryana is reproduced as under :-

“Every recruit shall, before enrolment, be medically examined and certified physically fit for service by the Civil Surgeon. A certificate in the prescribed form (10.64) signed by the Civil Surgeon personally, is an essential qualification for enrolment (vide Fundamental Rule 10).

The examination by the Civil Surgeon, will be conducted in accordance with the instructions issued by the medical department and will test the eyesight, speech and hearing of the candidate, his freedom from physical defects, organic or contagious disease, or any other defect or tendency likely to

render him unfit, and his age. The candidate must strip for examination, a lion covering being allowed except when the examination is being completed and any candidate who refuses to do so must be rejected. The conditions of policeservice make it necessary that the medical examination of candidates would be strict. Candidates shall be rejected for any disease or defect which is likely to render them unfit for the full duties of a police officer.”

A perusal of the aforesaid rule stipulates that every recruit shall, before enrolment, be medically examined and certified physically fit for service by the Civil Surgeon and a certificate in the prescribed form (10.64) signed by the Civil Surgeon personally, is an essential qualification for enrolment. The rules further stipulates that examination by the Civil Surgeon, will be conducted in accordance with the instructions issued by the medical department and will test amongst other things, for any defect or tendency likely to render the recruit unfit and that conditions of police service make it necessary that the medical examination of candidates be strict and candidates are to be rejected for any disease or defect which is likely to render them unfit for the performance of full duties of a police officer.

[7] Further appendix No.12.16 and the note thereto deals with points to be observed by Medical Officers while examining Police recruits with special emphasis for ensuring that there is no malformation, deficiency or defect of any essential part, besides the following points are not to be overlooked i.e. *abnormal curvature of the spine*. However, the Punjab Police Rules, 1934 as applicable in the State of Haryana amended upto 31.03.2008, as referred to above stands substituted vide notification dated 18.06.2015

issued by the Home Department, Government of Haryana. Relevant extract of the same is reproduced as under :-

“Rule 12.16 (10) Result of Examination (f) - The appointing authorities shall ensure medical fitness and verification of characters and antecedents before appointment. Vacancies advertised, if any, remaining unfilled because of rejection of candidates on medical grounds or character and antecedents verification or otherwise shall be considered in next recruitment.
”

[8] Thus, the medical fitness of a recruit is to be ensured by the appointing authority before appointment. It has not been disputed by learned counsel for the parties that the Civil Surgeon is the competent authority for certifying medical fitness of a recruit for appointment as Male Constable in Police Service.

[9] The department of Orthopedics, Pt. B.D.S. PGIMS, Rohtak conducted Special Medical Examination of the petitioner and the medical board was of the opinion that there was evidence of *right dorso lumber spine Scoliosis* and accordingly addressed communication to the above effect to the Medical Superintendent, Pt. B.D.S. PGIMS, Rohtak. On the basis of the report of the 05 Member Board of the Department of Orthopedics, Pt. B.D.S. PGIMS, Rohtak, the Civil Surgeon, Sirsa, addressed communication dt., 18.07.2017 to the Commandant, 3rd Battalion, Hisar, indicating the medical unfitness of the petitioner for appointment as constable on account of *right dorso lumber spine Scoliosis*’.

[10] Subsequently, the Civil Surgeon, Sirsa addressed communication dated 20.09.2017 to the Commandant, 3rd Battalion, Haryana Armed Force, Hisar that a Board of 02 Orthopedic Surgeons was constituted for medical examination of the petitioner and that the

complication / implication of '*right Dorso lumber Scoliosis*' were as follows:-

- “- Pain in back, neck, shoulder and buttock*
- Constipation*
- Limited mobility secondary to pain or functional limitation in adults*
- Breathing problem in severe cases*
- Heart problem-harder for heart to pump blood in severe cases*
- Chronic backache*
- Lower self esteem due to their appearance.*

and that the aforesaid complications were sufficient to hamper the day to day duty of the constable, therefore, the petitioner had been declared unfit for appointment to the post of constable.

[11] However, this Court vide Order dated 05.09.2018, directed the petitioner to appear before the PGIMS, Rohtak for ascertainment of the petitioners medical condition as also for getting information as to how long the petitioner could work in said condition.

[12] As has been noted above, Dr. Rohit Dumra, Medical Officer (Ortho.), Civil Hospital, Sirsa, who is present in Court on query stated that consequences / complications / implications referred to in Annexure R-4 dated 20.09.2017 could not be predicted as to how in much period of time the same would occur but said complications / implications referred to above in Annexure R-4 dated 20.09.2017 were likely to occur / aggravate during strenuous activities of service of the petitioner as a Police Official.

[13] I have considered the submissions of learned counsel for the parties and am of the view that once the notification (Annexure P-5) dated 18.06.2015 provides for the appointing authority to ensure medical fitness

and verification of character and antecedents of a candidate before appointment and the 05 Member Medical Board of Department of Orthopedics, Pt. B.D.S. PGIMS, Rohtak vide (Annexure R-2) having opined that there was evidence of '*right dorso lumber spine scoliosis*' where upon the Civil Surgeon, Sirsa vide Communication (Annexure R-3) dated 18.07.2017, addressed to the Commandant, 3rd Battalion, Hisar informed that the petitioner was medically unfit on account of '*right dorso lumber spine scoliosis*', which in turn was followed by another special medical examination of the petitioner by a Board of two Orthopedic Surgeons (Annexures R-4) dated 20.09.2017, indicating the complications / implications of '*right dorso lumber spine scoliosis*' and of said complications being sufficient to hamper the day to day functions of a Constable, therefore, the petitioner being declared unfit for appointment to the post of Constable as also the medical opinion of the medical officer present in Court, I am of the view that no interference is warranted for in the opinion of medical experts. Accordingly, keeping in view the arduous and strenuous nature of duties of a police Constable, as also the report of the medical experts, the medical unfitness of the petitioner for the post of Constable does not warrant any interference.

[15] Accordingly, finding no merit in the writ petition, the same is ***dismissed.***

(B.S.WALIA)
JUDGE

15.07.2019

rajesh.k.khurana/rajneesh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No